

# **RULES & REGULATION SUB-COMMITTEE MEETING**

**Tuesday, June 28, 2022  
4:00 p.m. – Rye Town Hall**

***Present:* Chair Steve Carter, Patricia Losik, Planning Administrator Kim Reed, Land Use Assistant Kara Campbell and Attorney Michael Donovan**

***Also Present from the Public:* Cathy Hodson, Jane Holway, Leanne Purdy and Warren Purdy**

## **I. Call to Order**

Chair Carter called the meeting to order at 4:02 p.m. and led the pledge of allegiance.

## **II. Minutes of June 9, 2022**

The following corrections were noted:

- Page 2, 2<sup>nd</sup> paragraph from bottom, 3<sup>rd</sup> sentence should read: **There is also the bonus calculation in (12) for the 15%.**
- Page 2, last paragraph, 1<sup>st</sup> sentence should read: **Attorney Donovan stated that he will go back and review B(4), A(8), and (12) to make sure the 100-year storm isn't already in there.**
- Page 8, 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence should read: **Planning Administrator Reed explained there were items that had to be discussed with the committee members first.**

**Motion by Patricia Losik to approve the minutes of June 9, 2022 as amended. Seconded by Steve Carter. All in favor.**

## **III. Finish review and vote on amendments**

Attorney Michael Donovan reviewed LDR Amendments 2022-23 through 2022-26.

**Amendment 2022-23** addresses conflicts. If there are regulations, standards or procedures that conflict, the stricter regulation, standard or procedure shall govern. This will be listed in the general provisions.

The Committee did not have any issues with the amendment.

**Amendment 2022-24 and 2022-25** requires stormwater management plans for minor subdivisions and minor land developments. This is the same language as the editorial changes in Amendment 2022-02, as the original language was confusing and not complete. The language for the proposed amendments is identical to what is in the major subdivision and major land development, provided that LDR Amendment 2022-02 is adopted.

Member Losik pointed out that the other piece that is being brought in is Article VI of the Land Development Standards. Both of these areas are being raised to include Articles VII through XI. She suggested adding this to the explanation.

Attorney Donovan suggested a sentence that says *LDR Amendment 2022-02 also requires that all submittals demonstrate compliance with the requirements of Articles VI through XI.*

Member Losik pointed out wording in 202-3.4,D that should be emboldened and italicized. Chair Carter agreed. It was also agreed the same changes should be reflected in Amendment 2022-25; §202-3.5,A.

Referring to 202-3.4, D(4), waiver request, Chair Losik stated there is already an amendment that is going to include the language *“specific circumstances relative to the subdivision or conditions of the land indicate that the waiver will properly carry out the spirit and intent of these regulations.”* She asked if they also need the language *“strict conformity would propose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit...”*

Attorney Donovan explained that if this language was not in there, the applicant would have the right to apply for a waiver anyway. Not every minor site development or minor subdivision is going to need a stormwater management plan. Therefore, this sort of invites the waiver in a sense by putting this sentence in there. He continued that if a site doesn't warrant a stormwater management plan, the hardship criteria is what a waiver would be granted on. That's why he just put this sentence in.

Member Losik stated that her question about the first part of the language would lead people to say it's an unnecessary hardship because of the expense of the engineering plan.

Attorney Donovan commented that they could put both in there.

Member Losik asked if this is something that the attorneys will argue.

Chair Carter commented that for a minor site development, it's always going to be a hardship because it's going to be expensive and they won't think they need it.

Attorney Donovan stated that from the Board's perspective, they probably won't require a stormwater management plan on a minor site development on a 10-acre site.

Member Losik noted that this language is great because it gives some flexibility for the asks from the applicant. It gives the Board many more tools to work with.

Chair Carter and Member Losik agreed the hardship should stay out.

**Amendment 2022-26** addresses irrigation. Attorney Donovan's pointed out that his recommendation was to only apply this to major site developments, but the Committee wanted it to apply to subdivisions as well. The amendment adds Appendix G. The appropriate sections from the NH DES model ordinance are attached and made part of Appendix G. Everything in Appendix G was taken verbatim from the state model. Attorney Donovan explained that if a site development is to include an irrigation system, the application has to include it and have an irrigation system plan. The plan has to comply with the requirements of Appendix G. He noted that this applies to all site developments, not just major, because that is what the Committee wanted. If the application does not include an irrigation system, any irrigation installed in the future would require approval by the Technical Review Committee and an irrigation system that complies with the attachment. He explained that the reason he put the Technical Review Committee (TRC) in there is because it would actually be an amendment to the site development approval, which would require an application to the site development approval, notices and a planning board hearing. He pointed out that if it was just on the TRC agenda, the abutters wouldn't be notified. Since the primary concern is water conservation, it is really not an abutter concern. It's mostly being done for water conservation. Attorney Donovan continued that with respect to subdivision plans, it says that it should include a note stating that any irrigation systems installed on approved lots shall require approval by the Technical Review Committee. Under most subdivision plans, there isn't a landscaping plan for every lot. He had some legal concerns on whether trying to regulate irrigation systems through subdivision regulations would standup. There is not that problem with site development applications because those typically require landscaping plans.

Attorney Donovan stated that the Committee may want to think about not doing this right now and have a more comprehensive town wide discussion involving the Water District, Planning Board and Select Board. He commented that he thinks the draft does what the Committee wanted.

Member Losik commented that she thinks it's great. The provision for the Technical Review Committee's involvement in both the site developments and subdivisions is fine because of the substantive content of the regulation from DES. She agrees that this may not be the big answer; however, the Planning Board should see this and take it up. There has been enough before the Planning Board about the constraints on those resources, at least with Rye Water. She thinks they would be remiss if they didn't bring this along.

Chair Carter asked if this would apply to anyone who is in a subdivision that wants to put in an irrigation system.

Attorney Donovan explained that a note is required on the subdivision plan, so it will only apply to subdivisions going forward. He doesn't think the Planning Board can regulate irrigation systems on subdivisions that already exist.

Chair Carter commented that what was done with Appendix G is helpful in specifying what people need to do to be in compliance if they put in an irrigation system.

Referring to the first paragraph in Appendix G, Member Losik suggested adding *revised May of 2020*. She pointed out that the reason is because in moving forward, DES may issue something else, but this will give people clarity.

The Committee agreed.

Member Losik noted that the DES model deals with grass mix. Under V.ii.d (in Appendix G), the model ordinance includes grass mix to be used. She would like to see that because it has been brought up. There were discussions with Danna Truslow and the Board knows her work. It's also brought up in VI.B.ii. She thinks it could be added in landscape design (e).

The Committee agreed.

There was discussion about D.xi and who would get the water report. Member Losik noted that the model deals with inspection, enforcement and penalties. She wonders where this would go.

Chair Carter pointed out that it is in the interest of the Water District to know that these are operating correctly. He thinks they are the ones who would want to have the report. They should be responsible for collecting.

Planning Administrator Reed asked if an independent entity can be put in the Land Development Regs to enforce.

Attorney Donovan explained that if this becomes a Land Development Regulation, it's enforceable by the Town. Enforcement would start with writing letters, requiring the audit and seeing the report. The Water District can be copied on the report; however, it has to go to someone in the Town as well. As part of the conditions of approval, he would require that the reports be filed with the Building Department, Planning Department and Danna Truslow.

Referring to the memo dropped off by Art Ditto (Commissioner of the Rye Water District), Member Losik stated it's called 'Rye Water District Requirements for Standalone Irrigation and Watering Systems'. Mr. Ditto noted that it was accepted by the Rye Water District by vote at the August 7, 2019 monthly meeting. When she asked Mr. Ditto what was meant by standalone, he gave examples in town that have a "standalone system"; such as, Whitehorse and 1244 Washington Road.

Planning Administrator Reed read from Mr. Ditto's memo submitted at the last Rules and Regulations Meeting, which was a proposal for a new zoning ordinance provision under Article V, Special Regulations, regarding irrigation systems. Mrs. Reed pointed out that the Committee decided that they would wait on this and give it to Attorney Eric Maher, as it is a zoning proposal. Mrs. Reed also pointed out that in the proposal, it is noted that the Rye Water District would be the enforcer.

Member Losik commented it would be great for the Planning Board to see both documents for discussion. She thinks that for right now, what Attorney Donovan has is perfect with adding who will get the report.

Attorney Donovan suggested the language *the water report shall go to the Rye Water District or other purveyor, Planning Board and Building Inspector.*

**Motion by Patricia Losik to move, subject to the changes discussed at this meeting, Proposed Land Development Regulation Amendments 2022-23 to 2022-26 to the July 12, 2022 Planning Board Meeting for discussion and to schedule a public hearing. Seconded by Steve Carter. All in favor.**

Referring to item #26 on the white paper, Attorney Donovan noted that they talked about incorporating a 100-year storm design for detention facilities. Back in February, it was thought to not be there. However, Steve Harding has revisited it and determined that it is there. Mr. Harding believes that the regulations, as they are now, do require a 100-year storm design, so item #26 in the white paper is moot.

Member Losik noted there are a number of definitions in the irrigation ordinance. They are not specific.

Attorney Donovan suggested adding the definitions to Appendix G.

**Motion by Patricia Losik to include the definitions, as provided in the NH DES May 2020 regulations, in Appendix G of Rye's Land Development Regulations. Seconded by Steve Carter. All in favor.**

Referring to 202-6.3.C(1)(a), Member Losik pointed out a typo. There was discussion about whether it should be more specific in 190-3.1. (190-3.1.H(1))

**Motion by Patricia Losik to amend 2022-01 to include editorial changes to Section 202-6.3.C(1)(a) and (b). Seconded by Steve Carter. All in favor.**

Referring to 202-6.9.C(1), Member Losik asked Planning Administrator Reed to ask Julie LaBranche if the sea-level rise projections are as up to date as they should be.

Referring to 2022-04, Member Losik commented that she thinks it needs a clarification. She noted that in 2021-05, the waiver section was voted to be amended. In the amendment, it added 1 in both cases to go along with the RSA.

The Committee agreed the 1 should be in both places and struck. (RSA 674:36-2.N(1) and 674:44-3.E(1)).

#### **IV. Other**

Chair Carter opened to the public for comments.

**Leanne Purdy, 1443 Ocean Blvd,** commented that they were thinking about getting something on the ballot for next spring. As she understands, there are restrictions on rentals for accessory dwelling units (190-5.6). She noted that the property owner shall reside on the premises. Also,

if the accessory dwelling unit is rented out, it shall be for a term greater than three months. She commented that this seems like it only applies to attached accessory dwelling units. She continued that the concept that they have is to put something forward on the ballot to apply those same rental restrictions to detached dwelling units.

Chair Carter noted that Rye does not have detached dwelling units. It has to be attached to be an accessory unit.

Member Losik explained that the Committee has taken two engagements; Land Development Regulations and the Zoning Ordinance. The Planning Board entered into an agreement with Attorney Maher for the review and rewrite of the Rye Zoning Ordinance. The Committee does not have his review yet. She pointed out that this issue is going to go more towards zoning language. Rules and Regulations took up detached accessory dwelling units (DADU) last fall. There were a host of questions and concerns that came up around DADU. The Planning Board is going to be looking at the zoning as informed by Attorney Maher.

Planning Administrator Reed pointed out that it will probably be the end of July, or the beginning of August, when the Committee will start getting into zoning amendments. She reiterated that Rye does not have detached accessory dwelling units. If there are two dwellings on one lot, it would have had to be established prior to 1953 or a variance would be needed for two dwellings on one lot.

There was some discussion about how to get a zoning amendment on the ballot. Member Losik recommended working through the Rules and Regulations Committee.

### **Adjournment**

**Motion by Patricia Losik to adjourn at 5:32 p.m. Seconded by Steve Carter. All in favor.**

Respectfully Submitted,  
Dyana Ledger